IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5007 OF 2005

Kirti Trambaklal Shah. ...Petitioner.
Vs.
The Collector of Mumbai District & Ors. ...Respondents.
....
Mr. Vikram Nankani with Mr. Ajay Panicker for the Petitioner.
Mr.S. M. Shah with Mr. Y.R. Mishra for Respondent No.1, 2 and 3.
.....

CORAM : F.I REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

September 21, 2005.

P.C.

Rule. Heard forthwith.

Pursuant to the order of this Court, which is dated 8th August 2005, an officer from the Registrar of Companies, Mrs.V. S. Hajare, Senior Technical Assistant, has remained present in the Court with the record. From the original record, we find that Form No.32 had been filed in the office of the Registrar on 20th August 1999. A change was recorded on 15th November 1999. With the above, the petition may now be considered as disposed of.

The Petitioner approached this Court pursuant to a

demand dated 4th March 2005 made on the Petitioner by Respondent No.1 under Section 267 of the Maharashtra Land Revenue Code, 1966, asking the Petitioner to pay a sum of Rs.90,00,002/- in satisfaction of the penalty of Rs.90,00,000/-. Subsequent to the demand, on behalf of the Petitioner, correspondence was exchanged with Respondent No.1. On 13th June 2005, the Petitioner received a copy of a letter dated 13th June 2005 addressed by the Joint Director General of Foreign Trade, Mumbai to the District Collector, requesting him to keep the recovery proceedings in abeyance upto 13th August 2005, in view of the pendency of the appeal filed by the Company. On 18th July 2005, it is case of the Petitioner that the Revenue Inspector from the office of the Collector of Mumbai, visited the residence of the Petitioner and threatened to attach and seal the residence flat. Consequent to that, the present petition. The demand on the Petitioner arises from the order dated 29th November 2004 passed by the Joint Director General of Foreign Trade against the Company and its Directors for non-fulfillment of export obligation, duty exemption availed on excess imports and interest thereon.

It is the case of the Petitioner that the said demand is

based on the licence issued to the Petitioner on 5th May 2000 on which date, it is the contention of the Petitioner that he has ceased to be a Director and consequently, the order dated 29th November 2004 could not be the basis to attach his property.

On behalf of the Respondent-authorities, the Learned Counsel points out that when the licence was issued, the name of the Petitioner was shown as the Director. Apart from that it is pointed out that the Petitioner's remedy is by way of an appeal.

Considering the contention of alternate remedy, we may note that the order dated 29th November 2004 does not name the Petitioner as a person. The order is against the Company and its Directors. In other words, those who were Directors at the time when the licence was issued. If the demand is made on the Petitioner for which he is not liable and to which he was not the party, the question of the Petitioner exhausting the alternate remedy would not arise. Even otherwise, it is not as if the Court is debarred from exercising extra ordinary jurisdiction on the facts of a case. Apart from that, by the order dated 8th August 2005, this Court directed the office of the Registrar of Companies to depute

an officer with the record and she has produced the record. In these circumstances, we do not think it appropriate to dismiss the petition on the ground that the Petitioner has an alternate remedy. The first contention, therefore, is rejected.

In so far as the second contention is concerned, the case of the Respondent is based on the fact that the name of the Petitioner was shown as a Directior when the application for licence was made. An application for licence was made as now seen from the record after the Petitioner ceased to be a Director. We enquired of the Learned Counsel for the Respondents as to whether the Petitioner had signed the application for licence. The Learned Counsel on instructions fairly states that the Petitioner had not signed the said application. Merely because the name of the Petitioner was shown as Director by itself cannot result in passing the liability on the Petitioner if otherwise he is ceased to be a Director. In the instant case, we are satisfied from both the certified copy on record and the record produced from the office of the Registrar of Companies, Goa that in the record of the Registrar of Companies Form No.32 had been filed on 20th August 1999 which indicates that the Petitioner had resigned and the change

was accordingly effected in the records of the Company. Once that be the case, the demand made on the Petitioner is without jurisdiction and consequently rule is made absolute in terms of prayer clauses (a) and (b). In the circumstances, there shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)